SUPREME COURT, U. S.

In The

Supreme Court of the United States

October Term, 1973

Supreme Court, U. S.
FILED
SEP 5 1974
MICHAEL RODAK, JR., CLERK

No. 74-66

WILLIAM HETTLEMAN, ET AL.,

Petitioners,

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

BRIEF FOR RESPONDENTS IN OPPOSITION

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INDEX

PAGE

OPINION AND ORDERS BELOW 2

JURISDICTION 3

QUESTIONS PRESENTED 3

STATUTES INVOLVED 5

RULES OF COURT INVOLVED 6

STATEMENT 8

ARGUMENT 11

I.

The Petition For Writ Of Certiorari Fails To Conform To The Requirements Of Rule 23(1)(f) Of The Revised Rules Of This Court 11

II.

The Federal Questions Sought To Be Reviewed Were Not Passed On By The Courts Of Illinois .. 13

III.

The Judgments Sought To Be Reviewed Rest On An Adequate Non-Federal Basis 15

IV.

The Petition For Writ Of Certiorari Fails To Conform To The Requirements Of Rule 19 Of The Revised Rules Of This Court 18

V.

Review By Certiorari Of The Order Entered By The Supreme Court Of Illinois On September 22, 1970 Is Barred Both By The Requirement Of Finality And Also By The Requirement Of Section 2101(c) Governing Time Within Which To Petition 20

CONCLUSION 21

CITATIONS

Cases

Atlantic Coast Line R.R. Co. v. Mims, 242 U.S. 532 (1917) 16

Davis v. Wechsler, 263 U.S. 22 (1923) 16

Durley v. Mayo, 351 U.S. 277, (1956), reh. den. 352 U.S. 859 (1956) 14, 18

Ellis v. Dixon, 349 U.S. 458 (1955) 14

Hettleman v. Chicago Law Institute, 390 U.S. 338 (1968), reh. den. 390 U.S. 1036 (1968) 9, 19

Lynch v. New York ex rel. Pierson, 293 U.S. 52 (1934) 14

Nickel v. Cole, 256 U.S. 222 (1921) 16

Phyle v. Duffy, 334 U.S. 431 (1948) 14

Stembridge v. Georgia, 343 U.S. 541 (1952) 14

Statutes

Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U.S.C. §1257 (State Courts; Appeal; Certiorari) 5, 13, 15, 16, 20, 22

Act of June 25, 1948, c. 646, 62 Stat. 961; Act of May 24, 1949, c. 139, §106, 63 Stat. 104, 28 U.S.C. §2101 (Supreme Court; Time for Appeal or Certiorari; Docketing; Stay) 5, 20, 21, 22

Illinois Civil Practice Act, §72, 1967 Ill. Rev. Stats. ch. 110, §72 ..... 5, 14, 15

Court Rules

Revised Rules of the Supreme Court of the United States, Rule 19, 28 U.S.C. (Appendix) 6, 18

Revised Rules of the Supreme Court of the United States, Rule 23, 28 U.S.C. (Appendix) 6, 11, 12

Rule 315, Illinois Supreme Court Rules, 1973 Ill. Rev. Stats. ch. 110A, §315 ..... 7, 17

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents Chicago Law Institute, County of Cook, Edward L. Arkema and John O'Brien respectfully move the Court, pursuant to Rule 24 of the Revised Rules of this Court, to deny the Petition of William Hettleman and Palmer D. Edmunds for a Writ of Certiorari to the Supreme Court of Illinois. In support of their motion, Respondents respectfully state that the Petition on its face fails to demonstrate the jurisdiction of this Court over the subject matter of the Petition, and also fails to state any sound reason why this Court, in its discretion, should issue a Writ of Certiorari to the Supreme Court of Illinois for further proceedings herein.

OPINION AND ORDERS BELOW

Petitioners pray that a Writ of Certiorari issue to review the Orders entered by the Supreme Court of Illinois on September 22, 1970 (Pet. App. B), January 30, 1974 (Pet. App. F) and March 21, 1974 (Pet. App. G). On August 9, 1968, Petitioners had moved to vacate the final decree entered by the Circuit Court of Cook County, Illinois on July 13, 1966 (Pet. App. AA). However, the Circuit Court of Cook County denied Petitioners' Petition for Relief under §72 of the Illinois Civil Practice Act. On August 19, 1968, Petitioners moved to vacate the Order of August 9, 1968, but the Circuit Court of Cook County denied that motion as well.

Petitioners sought appeal from the Orders of August 9, 1968, and August 19, 1968, directly to the Supreme Court of Illinois, on the ground that various constitutional issues were involved, but the Supreme Court of Illinois transferred the case to the Illinois Appellate Court, First District, on September 22, 1970, on the ground that no substantial constitutional questions were presented (Pet. App. B). Petitioners moved for reconsideration of the Order of Transfer, but their motion was denied on November 12, 1970.

On September 13, 1973, the Illinois Appellate Court, First District, dismissed the Petitioners' Appeal and affirmed the Orders entered August 9, 1968, and August 19, 1968, in the Circuit Court of Cook County (Pet. Exh. E).

Petitioners next sought leave to appeal from the decision of the Illinois Appellate Court, First District, entered on

September 13, 1973, but the Illinois Supreme Court denied their Petition for Leave to Appeal on January 30, 1974 (Pet. App. F), and thereafter denied their Petition for Reconsideration on March 21, 1974 (Pet. Exh. G). It is to review the Orders of the Supreme Court of Illinois entered on September 22, 1970 (transfer to Illinois Appellate Court, First District) (Pet. App. B), on January 30, 1974 (denying Petition for Leave to Appeal) (Pet. App. F), and on March 21, 1974, (denying motion for reconsideration) (Pet. App. G) for which Petitioners now ask this Court to issue a Writ of Certiorari.

JURISDICTION

Petitioners rely on Title 28 U.S.C. Section 1257(3) as permitting review by this Court by Writ of Certiorari. However, Petitioners' reliance on §1257(3) is misplaced, inasmuch as review thereunder is limited to Federal questions, and the Federal questions of which Petitioners seek review were not passed on by the Courts of Illinois.

QUESTIONS PRESENTED

I.

Does a Petition for Writ of Certiorari conform to the requirements of Rule 23 where Petitioners have failed to show that the Federal questions sought to be reviewed were properly raised in the State courts?

II.

Does the jurisdiction of the Supreme Court of the United States attach on a Petition for Writ of Certiorari where Federal Constitutional questions are not involved and the orders of the State trial, Appellate and Supreme courts do not mention, discuss or pass on any Federal questions?

III.

Does the jurisdiction of the Supreme Court of the United States attach on a Petition for Writ of Certiorari where the decisions of the State courts rest on adequate non-Federal grounds?

IV.

Does a Petition for Writ of Certiorari conform to the requirements of Rule 19 where the Petition fails to demonstrate the requisite "special and important reasons"?

V.

Can the jurisdiction of the Supreme Court of the United States attach at this time to review a non-final order entered by the Supreme Court of Illinois on September 22, 1970?

STATUTES INVOLVED

Title 28 U.S.C. Section 1257

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

• • •

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Title 28 U.S.C. Section 2101

• • •

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

Illinois Civil Practice Act, § 72

"(1) Relief from final orders, judgments and decrees, after 30 days from the entry thereof, may be had upon petition as provided in this section. Writs of error coram nobis and coram vobis, writs of audita querela, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtain-

able and the grounds for said relief heretofore available, either at law or in equity, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order, judgment or decree from which relief is sought or of the proceedings in which it was entered. There shall be no distinction among actions at law, suits in equity and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

"(2) The petition must be filed in the same proceeding in which the order, judgment or decree was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule."

RULES OF COURT INVOLVED

United States Supreme Court Rule 19

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

United States Supreme Court Rule 23

"1. The petition for writ of certiorari shall contain in the order here indicated—

• • •

"(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

Illinois Supreme Court Rule 315

"(a) *Petition for Leave to Appeal; Grounds.* A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed."

STATEMENT

Petitioners have petitioned for a Writ of Certiorari to the Supreme Court of Illinois seeking review by this Court of Orders entered by the Supreme Court of Illinois on September 22, 1970, January 30, 1974, and March 21, 1974. A Complaint for Declaratory Judgment had been filed in the Circuit Court of Cook County, Illinois, in Case No. 65 CH 6863 on December 10, 1965, by The Chicago Law Institute and two of its members. The Complaint recited why The Chicago Law Institute could not continue to operate in competition with the free law library proposed by the County of Cook. Named as defendants were the Attorney General of Illinois, the County of Cook, and a representative number of members of The Chicago Law Institute, including some who were opposed to the relief requested. The prayer for relief requested that the Circuit Court of Cook County, sitting as a Court of Chancery, approve an agreement by and between The Chicago Law Institute and the County of Cook to transfer the Institute's library and other assets to the County to be used as or as a part of the County's law library, and authorize the Institute and the County to carry such an agreement into execution.

The Circuit Court of Cook County, after extensive hearings and briefs had been had in the matter, entered a final decree in Case No. 65 CH 6863 on July 13, 1966. The decree approved the agreement entered into by and between The Chicago Law Institute and the County of Cook providing for the Institute to turn over its law library and other assets to the County, to become the nucleus of a law library, operated and maintained by the County of Cook.

Subsequent to the entry of the final decree in Case No. 65 CH 6863, William Hettleman and Palmer D. Edmunds (Petitioners herein), and J. Edward Jones sought review by Appeal in this Court in Case No. 961 (October Term, 1967) of an Order entered June 20, 1967 by the Supreme Court of Illinois. In that Order, the Supreme Court of Illinois denied Petitioners' Motion to reconsider its denial of Petitioners' Petition for leave to appeal under Section 76 of the Illinois Civil Practice Act. In their Jurisdictional Statement to this Court in Case No. 961, Petitioners claimed to present to the Court the questions of whether the actions of the trial judge in Case No. 65 CH 6863 violated Petitioners' constitutional rights (Jurisdictional Statement Pages 8 to 10) and whether the execution of a contract, and suit to seek approval thereof, violated Petitioners' constitutional rights (Jurisdictional Statement Pages 6 to 7). This Court on March 11, 1968, granted Respondents' Motion to Dismiss the appeal in No. 961, for want of jurisdiction. Treating the papers whereon the appeal was taken as a Petition for Writ of Certiorari, this Court also denied certiorari. *Hettleman* v. *Chicago Law Institute*, 390 U.S. 338 (1968). On April 22, 1968, this Court denied Petitioners' Petition for Rehearing in Case No. 961. *Hettleman* v. *Chicago Law Institute*, 390 U.S. 1036 (1968).

After the entry of this Court's Orders in Case No. 961, Petitioners herein sought review in the Circuit Court of Cook County, Illinois, on August 9, 1968, of the final decree entered on July 13, 1966. The trial court on August 9, 1968 denied Petitioners' Petition, pursuant to §72 of the Illinois Civil Practice Act, and on August 19, 1968, the trial court also denied Petitioners' Petition to vacate the order of August 9, 1968.

Petitioners appealed from the Orders of August 9, 1968 and August 19, 1968 directly to the Supreme Court of Illinois, but that Court on September 22, 1970 concluded that it did not have jurisdiction on direct appeal for want of the existence of any substantial constitutional questions, and transferred the cause to the Appellate Court, First District. On September 13, 1973, the Appellate Court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered on August 9, 1968 and August 19, 1968. After the Appellate Court denied Petitioners' Petition for rehearing of its September 13, 1973 Order, Petitioners petitioned the Supreme Court of Illinois pursuant to Rule 315 of the Rules of the Supreme Court of Illinois, for leave to appeal to that Court. That Petition was denied on January 30, 1974, and on March 21, 1974, the Supreme Court of Illinois denied Petitioners' Petition for reconsideration of its January 30, 1974 Order.

ARGUMENT

Petitioners have failed to conform to the requirements of Rule 23(1)(f) of the Revised Rules of this Court in that Petitioners have not demonstrated how the Federal questions sought to be reviewed were raised and passed upon in the Courts of Illinois. Furthermore, Petitioners have failed in their Petition to establish the jurisdiction of this Court to issue a Writ of Certiorari to the Supreme Court of Illinois pursuant to Title 28 U.S.C. Section 1257 (3), and do not comply with the time requirements of Title 28 U.S.C. Section 2101(c). Finally, Petitioners have failed to conform to the requirements of Rule 19 of the Revised Rules of this Court in that the Petition does not demonstrate the requisite "special and important reasons" for granting certiorari in the exercise of the sound judicial discretion of this Court.

I.

THE PETITION FOR WRIT OF CERTIORARI FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 23(1)(f) OF THE REVISED RULES OF THIS COURT.

Rule 23(1)(f) of the Revised Rules of this Court sets out at some length just what is to be included in a Petition for Writ of Certiorari. If Certiorari is sought to review a decision of a State court, the Petition should include a description of the manner in which the Federal question was presented. The showing as to how the Federal question was raised and passed on in the State courts is to be made with considerable particularity.

The Petition for Writ of Certiorari fails to conform to the requirements of Rule 23(1)(f) of the Revised Rules of this Court, and therefore is insufficient to establish the jurisdiction of this Court to review the judgment of the Supreme Court of Illinois on Writ of Certiorari, for the following reasons:

1. Petitioners have failed to specify the stages in the proceedings in the Circuit Court of Cook County, in the Illinois Appellate Court, and in the Illinois Supreme Court at which, and the manner in which, the Federal questions sought to be reviewed were raised.

2. Petitioners have failed to specify the method of raising the Federal questions sought to be reviewed.

3. Petitioners have failed to specify the way in which the Federal questions sought to be reviewed were passed upon by the Circuit Court of Cook County, the Illinois Appellate Court, and the Illinois Supreme Court.

4. Petitioners have failed to quote those portions of the record and have failed to refer to those places in the record containing the matters which allegedly support Petitioners' assertion that the rulings of the State courts are of a nature to bring the case within Title 28 U.S.C. Section 1257(3) conferring jurisdiction on this Court.

Accordingly, Respondents respectfully submit that the Petition for Writ of Certiorari is insufficient, under the Revised Rules of this Court, to demonstrate jurisdiction to hear the Federal questions sought to be reviewed on certiorari to the Illinois Supreme Court. This Court should not take jurisdiction to review the orders of the State courts, and the Petition for Writ of Certiorari should be denied.

II.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT PASSED ON BY THE COURTS OF ILLINOIS.

Petitioners appear to contend that certain Federal constitutional rights have been violated by actions of the Circuit Court of Cook County, both in granting summary judgment in favor of the Respondents and also in denying Petitioners any relief under §72 of the Illinois Civil Practice Act. Apparently, Petitioners further contend that they have in some way been denied due process of law. They rely on Title 28 U.S.C. Section 1257(3) as their basis for petitioning to this Court for Writ of Certiorari to review Orders of the Illinois Supreme Court. But §1257(3) does not support Petitioners' reliance, and it does not sustain the Petition for Writ of Certiorari in this case.

Petitioners' conclusory allegations, unsupported by any allegations of fact, are clearly insufficient to establish the jurisdiction of this Court to hear and determine a Petition for Writ of Certiorari under §1257(3). Dispositive of the question of the jurisdiction of this Court to hear this cause pursuant to §1257(3) is the plain fact that nowhere in any of the proceedings had in this matter in any of the courts of Illinois have any Federal rights, privileges, or immunities been considered, passed on, or disposed of. The Federal constitutional questions which Petitioners seek to have reviewed by means of their Petition for Writ of Certiorari have never been passed on by the trial court or the Illinois Appellate Court or the Illinois Supreme Court. Title 28 U.S.C. Section 1257(3) therefore is inapplicable to this case and cannot establish the jurisdiction of this Court to consider a Petition for Writ of Certiorari.

The burden is clearly on Petitioners to demonstrate that a Federal question was presented to the State court and that a decision on such a question was necessary to a determination of the cause. Thus, where the highest State court delivers no opinion rendering its judgment, and both Federal and non-Federal questions have been raised, this Court ordinarily presumes that the State court's decision is based on a non-Federal ground and jurisdiction will be declined. *Lynch* v. *New York ex rel. Pierson*, 293 U.S. 52, 54-55 (1934); *Phyle* v. *Duffy*, 334 U.S. 431 (1946); *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1952). Where adequate State grounds are asserted and appear reasonable, "petitioner, in order to establish [the Court's] jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." *Durley* v. *Mayo*, 351 U.S. 277, 281 (1956), *reh. den.*, 352 U.S. 859 (1956). The burden of establishing jurisdiction is not met if "it appears that the judgment [below] *might* have rested upon a non-federal ground." *Durley* v. *Mayo*, 351 U.S. 277 (1956), *reh. den.*, 352 U.S. 859 (1956); *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1952); *Ellis* v. *Dixon*, 349 U.S. 458 (1955).

Respondents respectfully submit that the decisions of the Illinois Supreme Court of which Petitioners now seek review upon certiorari are based solely upon adequate non-Federal grounds. The denial by the trial court on August 9, 1968, of the Petition for Relief under §72 of the Illinois Civil Practice Act was based solely on the insufficiency of that Petition to warrant relief under §72 of the Illinois statute. The only issue in the Illinois Appellate Court, First District, on September 22, 1973, when that court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered on August 9, 1968 and

August 12, 1968, was whether or not the trial court had abused its sound judicial discretion in denying Petitioners relief under §72 of the Illinois Civil Practice Act. Furthermore, leave to appeal pursuant to Rule 315 of the Rules of the Supreme Court of Illinois clearly is a matter within the sound discretion of the Supreme Court of Illinois, and whether or not to exercise that discretion was the sole issue before that court on January 30, 1974, when it entered the Order denying the Petition for Leave to Appeal, review of which is now asked by certiorari. Thereafter, on March 21, 1974, the Supreme Court of Illinois denied a further petition for reconsideration of the prior Order of January 30, 1974.

In all of the above instances, the Orders do not mention, do not discuss and do not pass on any constitutional or other Federal questions such as Petitioners ask this Court to review. Accordingly, Respondents respectfully submit that the proceedings in the Illinois courts clearly have not involved any Federal questions and that Petitioners therefore cannot establish Federal jurisdiction under §1257(3) based on a claim that the Orders of the Illinois courts which Petitioners seek to have reviewed involve any Federal questions. Therefore, the Petition for Writ of Certiorari should be denied.

III.

THE JUDGMENTS SOUGHT TO BE REVIEWED REST ON AN ADEQUATE NON-FEDERAL BASIS.

The Orders of the Illinois Supreme Court entered on September 22, 1970, January 30, 1974, and March 21, 1974, respectively, which Petitioners seek this Court to review by certiorari, clearly rest on Petitioners' failure to comply with the applicable provisions of the Illinois Civil Practice Act and the Illinois Supreme Court Rules. Thus, the Orders

which Petitioners seek to have reviewed upon certiorari rest on adequate and independent non-Federal grounds of decision.

The rulings of the Illinois Supreme Court on the three dates in question are grounded on State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules. So long as the local procedure does not discriminate against the raising of Federal claims and has not been used to stifle a Federal claim or to evade a vindication of Federal rights, this Court will respect local procedural requirements. See *Davis* v. *Wechsler*, 263 U.S. 22, 24-25 (1923). Accordingly, Respondents respectfully submit that each State court judgment is based on a non-Federal ground, and that the non-Federal ground is *adequate* to support the State court judgment. Therefore, this Court lacks jurisdiction under Title 28 U.S.C. Section 1257 (3) to review the Orders which Petitioners seek to have reviewed. When "there can be no pretense that the [state] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any Federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U.S. 222, 225 (1921); see also *Atlantic Coast Line R.R. Co.* v. *Mims*, 242 U.S. 532, 536-537 (1917).

The issues in the appellate proceedings prosecuted in the Illinois courts by Petitioners have related wholly to questions of whether or not compliance has been had with the Illinois Supreme Court Rules and the Illinois Civil Practice Act governing appeals. The record of determination to date includes the following:

1. On September 22, 1970, the Illinois Supreme Court transferred Petitioners' direct appeal to the Illi-

nois Appellate Court, First District, on the ground that the requisite substantial constitutional questions necessary to sustain direct appeal as a matter of Illinois law were not present.

2. On September 22, 1973, the Illinois Appellate Court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered August 9, 1968 and August 19, 1968, presumably on the ground that the trial court had not abused its sound judicial discretion in denying relief under §72 of the Illinois Civil Practice Act.

3. On January 30, 1974, the Illinois Supreme Court denied Petitioners' Petition for leave to appeal, leave to appeal being a matter clearly within the discretion of the Illinois Supreme Court under Rule 315 of the Rules of the Supreme Court of Illinois.

4. On March 21, 1974, the Illinois Supreme Court denied Petitioners' Petition for reconsideration of the Order entered on January 30, 1974, denying the Petition for leave to appeal, presumably on the ground that the judgment of January 30, 1974 had been correct and that further reconsideration by the Court was not warranted.

Leave to appeal to the Illinois Supreme Court, as sought by the Petitioners in this case, was not a matter of right, but was a matter for the discretion of the Illinois Supreme Court. The Petitioners made no showing whatever to warrant consideration for leave to appeal under Illinois Supreme Court Rule 315(a), although they clearly had the burden of showing why review was warranted. Accordingly, the Illinois Supreme Court properly denied them leave to appeal.

Respondents respectfully submit that the Supreme Court of Illinois based its Orders of September 22, 1970, January 30, 1974 and March 21, 1974, upon substantial and sufficient non-Federal grounds of decision. Accordingly, this Court should not take jurisdiction to review those orders. *Durley v. Mayo*, 351 U.S. 277 (1956), *reh. den.* 352 U.S. 859 (1956). The Petition for Writ of Certiorari should be denied.

IV.

THE PETITION FOR WRIT OF CERTIORARI FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 19 OF THE REVISED RULES OF THIS COURT.

Rule 19 of the Revised Rules of this Court sets out at some length the considerations which govern the Court in granting review on certiorari. Rule 19 states clearly that "[a] review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." In the absence of a sufficient showing of the requisite special and important reasons for granting the writ, the Court, in the exercise of its sound judicial discretion, should deny a Petition for Writ of Certiorari.

This Petition for Writ of Certiorari is not the first time that the Petitioners have come before this Court upon appeal from the final decree of the Circuit Court of Cook County, Illinois, entered on July 13, 1966, in Case No. 65 CH 6863. In their Jurisdictional Statement filed in prior docket number 961 (October Term, 1967), the Petitioners herein sought to raise the issues of the trial court's power to issue the decree in question (Jurisdictional Statement, Docket 961, pages 8-10) and of the trial judge's failure to excuse himself from the trial proceedings (Jurisdictional

Statement, Docket 961, pages 8-10), both of which issues the same Petitioners seek to raise in this Petition for Writ of Certiorari (Petition, page 6).

In Docket No. 961 (October Term, 1967), this Court dismissed, for want of jurisdiction, the appeal of Messrs. Hettleman and Edmunds, and considering their appeal as a Petition for Writ of Certiorari, also denied the Petition. *Hettleman* v. *Chicago Law Institute,* 390 U.S. 338 (1968); *reh. den.* 390 U.S. 1036 (1968).

Thus, the remaining issue now advanced by Petitioners merely involves the decision of the trial court in August, 1968, to deny Petitioners' motion to vacate the final decree entered by the trial court on July 13, 1966, which decree, as discussed *supra,* has already withstood the scrutiny of the appellate process, including dismissal of an appeal and denial of a Petition for Writ of Certiorari by this Court in *Hettleman* v. *Chicago Law Institute,* 390 U.S. 338 (1968); *reh. den.* 390 U.S. 1036 (1968).

Petitioners have failed to state any meritorious reasons demonstrating why the questions presented are so special or important, within the meaning of Rule 19 of the Revised Rules of this Court, as to warrant the Court in granting certiorari in the exercise of its sound judicial discretion. Accordingly, the Petition should be denied.

V.

REVIEW BY CERTIORARI OF THE ORDER ENTERED BY THE SUPREME COURT OF ILLINOIS ON SEPTEMBER 22, 1970 IS BARRED BOTH BY THE REQUIREMENT OF FINALITY AND ALSO BY THE REQUIREMENT OF SECTION 2101(c) GOVERNING TIME WITHIN WHICH TO PETITION.

Review by certiorari of the Order entered by the Illinois Supreme Court on September 22, 1970 is barred both by the requirement of finality and also by the requirement of Title 28 U.S.C. Section 2101(c) governing time within which to petition.

Title 28 U.S.C. Section 1257(3) provides for review by the Supreme Court of the United States by Writ of Certiorari of certain "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." In their Petition for a Writ of Certiorari, Petitioners pray that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court entered on September 22, 1970. However, the decision of the Illinois Supreme Court entered on that date, transferring Petitioners' cause to the Illinois Appellate Court, First District, is clearly not a "final judgment or decree" within the meaning of §1257.

Furthermore, Title 28 U.S.C. Section 2101(c) bars any review by writ of certiorari of the Order of the Illinois Supreme Court entered on September 22, 1970. Section 2101(c) requires that "[a]ny other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of

the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

The Order of Transfer entered by the Illinois Supreme Court on September 22, 1970, clearly was entered more than ninety days prior to the filing of the Petition for Writ of Certiorari, which occurred on August 5, 1974. There has been no compliance whatever with the time requirements of Title 28 U.S.C. Section 2101(c), and accordingly, the Petition for Writ of Certiorari to review the judgment of the Illinois Supreme Court entered on September 22, 1970, even if otherwise reviewable by this Court, is barred, for having been untimely filed.

CONCLUSION

Respondents respectfully submit that the Federal questions which Petitioners seek to have reviewed were not passed on by the courts of Illinois and that the judgments of the Illinois Supreme Court which Petitioners seek to have reviewed rest on an adequate non-Federal basis.

Respondents also submit that the Petitioners have failed altogether to state any special and important reasons for this Court to grant review upon Writ of Certiorari, in its sound judicial discretion; on the contrary, the issues in this case are solely questions of State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules, and review upon Writ of Certiorari is not warranted.

Finally, the Petition for Writ of Certiorari as to the Order of September 22, 1970, should be denied because that Order is not a final judgment or decree, within the meaning of Title 28 U.S.C. Section 1257, and also because the Petition is barred by the 90-day requirement (subject to 60-day extension) of Title 28 U.S.C. Section 2101(c) concerning appeals and writs of certiorari.

The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

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